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Message Text

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73
ACTION L-03

INFO OCT-01 ARA-16 ISO-00 OPIC-12 COME-00 TRSE-00 OMB-01

EB-11 AID-20 CIAE-00 INR-10 NSAE-00 RSC-01 DRC-01

/076 W
---------- 125030
P 291648Z JAN 74
FM AMEMBASSY LA PAZ
TO SECSTATE WASHDC PRIORITY 2079

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E.O. 11652: N/A
TAGS: BDIS, EMIN, BL
SUBJ: EMPC/EMBOSA

REFS: (A) STATE 014154; (B) LA PAZ 0225; (C) STATE 013783;
(D) A-245 NOVEMBER 26, 1973.

SUMMARY: EMBASSY AGREES THAT THERE ARE CONTRADICTORY ASSERTIONS AS STATED IN REF A. IN VIEW OF THESE AND BECAUSE WE NOT CONVINCED THERE STILL IS RECOURSE TO ARBITRATION, WE HESITATE TO URGE GOB TO ARBITRATE WHEN MATTER HAS BEEN LEGALLY CLOSED. NOT YET CLEAR WHETHER TYE'S LAWYER EFFECTIVELY REQUESTED ARBITRATION BEFORE EMBOSA'S BOARD RESOLVED TO LIQUIDATE COMPANY OR WHETHER ARBITRATION CAN BE REQUESTED FOLLOWING LIQUIDATION PERIOD. END SUMMARY.

1.. FIRST CONTRADICTION IS IN FIRST PARAGRAPH OF TYE'S LETTER TO SENATOR BENTSEN DATED NOVEMBER 30, 1973, WHEREIN TYE STATES IMPC RECEIVED HALF MILLION DOLLARS IN COMPENSATION FOR NATIONALIZATION OF ITS PROPERTY. EMBASSY WILL SEND ASAP TRANLATION AND COPY IN SPANISH OF ORIGINAL RECEIPT AND DOCUMENT OF PAYMENT SIGNED BY TYE AND IMPC'S LAWYER, LUIS SOUX, DECLARING AND "CONFESSING" THEY RECEIVED CHECK DULY ENDORSED FOR US$ 1,447,066 WHICH THEY RECOGNIZE AS JUST AND FAIR INDEMNIFICATION FOR ALL ITS INVESTMENTS IN BOLIVIA AND THOSE MADE IN FOREIGN COUNTRIES FOR INVESTIGATIONS RELATED TO TREATMENT AND MINING OF TIN TWILINGS.
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2.. SECOND CONTRADICTION IN SAME PARAGRAPH IS THAT QUOTE WE HAD TO GIVE 51 PERCENT INTEREST IN ANOTHER MINE WHICH WAS NOT NATIONALIZED UNQUOTE. WE HAVE NOT FOUND ANY WRITTEN EVIDENCE IN DOCUMENTS THAT HUARI-HUARI DEAL RELATED TO IMPC SETTLEMENT. ACCORDING DOCUMENTS WE HOLD, TYE GAVE ON MARCH 16, 1972 TO MINISTRY NATIONAL DEFENSE A TWO YEAR OPTION CONTRACT AS OF MARCH 1, 1972 TO PURCHASE 51 PERCENT OF STOCK OF GIBRALTER HUARI-HUARI CORPORATION. OPTION EXPIRES ON MARCH 1, 1974.

3. THIRD CONTRADICTION IS THAT ACCORDING TO REF A, ITEM A, TYE CLAIMS EMBOSA'S LEGAL STATUS IMPERSONERIA JURIDICAL ESTABLISHED AUGUST, 1973, BUT APPEARS IT WAS FIRST RECOGNIZED MAY 3, 1972 BY SUPREME RESOLUTION 162872 AND ACCORDING DE LA ROCHA WAS FINALLY IMPLEMENTED BY SUPREME RESOLUTION NO 163617 DATED AUGUST 16, 1972.

4. FOURTH CONTRADICTION IS THAT ACCORDING TO COMIBOL AND MINMINES RECORDS, PLANT OPERATED FROM MAY TO NOVEMBER, 1972 AND PRODUCED 139.9 METRIC TONS FINE TIN CONTENT IN CONCENTRATE FORM WHEREAS ACCORDING REF A TYE CLAIMS WAS OPERATING FROM FEBRUARY TO JULY, 1972 AND PRODUCED 154 METRIC TONS FINE TIN. UNDER COMIBOL MANAGEMENT PLANT OPERATED FROM JANUARY TO DECEMBER , 1971 AND PRODUCED 249.0 METRIC TONS OF FINE TIN EQUIVALENT.

5. ACCORDING TO DR. LUIS SOUX, IMPC'S PREVIOUS LAWYER, AND IMPC'S PRESENT LAWYER, DR. HUGO DE LA ROCHA, NEITHER ATTORNEY HAD REQUESTED ARBITRTRATION IN WRITING BEFORE LIQUIDATION OF EMBOSA. SOUX STATES ON SEPTZMBER 27, 1973 WHEN BOARD OF DIRECTORS LIQUIDATED EMBOSA, HE MADE ORAL APPEAL FOR ARBITRATION. DE LA ROCHA NOW TRYING TO OBTAIN LEGALIZED REOCCRD OF MINUTES OF THIS MEETING. EMBASSY NOTES THAT BOOARD RESOLVED TO LIQUIDATE EMMBOSA ON MEETING OF SEPTEMBER 12, 1973, WHICH PERHAPS WHOULD HAVE BEEN TIME INDICATED FOR SOUX TO HAVE MADE WRITTEN APPEAL FOR ARBITRATION. AS REPORTED IN REF B, TYE SENT LETTER TO MINMINES STATING HE HAD TRIED TO SEE MINISTER "TO TRY TO REACH AN ARBITRATED AGREEMENT". ACCORDING DE LA ROCHA THIS WRITTEN EXPRESSION OF INTEREST IN ARBITRATED STEELEMENT CAN ALSO BE TAKEN AS REQUEST FOR ARBITRATION.

6. FYI. DE LA ROCHA ON JANUARY 23, 1974 TOLD EMBOFF HE HAD ADVISED
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TYE TO FOREGET EMBOSA AND CONCENTRATE ON GIBRALTER HUARI-HUARI AFFAIRS.

7. IN VIEW OF MANY CONTRADICTIONS AND QUESTIONS OF FACT IN THIS CASE WE BELIEVE USG POSITION AT THIS TIME PROBABLY COULD BE NO MORE THAN SIMPLY TO URGE GOB TO SUBMIT DISPUTE TO ARBITRATION AS SPECIFIED IN ARTICLE 41 OF STATUTE OF INCORPORATION AND WE ARE NOT EVEN SURE WE CAN DO THIS. WE NOT ENTIRELY CONVINCED EVEN THIS

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OPPORTUNITY TO USE ARBITRATION HAS NOT ALREADY BEEN LOST TO IMPC. IT IT TURNS OUT THAT MINUTES OF LAST STOCKHOLDERS' MEETING DO NOT SHOW THAT IMPC REP REQUESTED ARBITRATION THEN ARTICLE 41 MAY NOT BE AVAILABLE TO IMPC BECUASE REQUEST MAY HAVE BEEN MADE DURING LIFE OR LIQUIDATION PHASE OF EMBOSA. WE DO SEE SOME POSSIBLE MERIT IN DE LA ROCHA'S VIEW THAT COMIBOL SHOULD HAVE REFERRED MATTER TO ARBITRATION RATHER THAN PROCEEDING DIRECTLY TO LIQUIDATION. END FYI.

7. ACTION REQUESTED: THAT DEPARTMENT LAWYERS CAREFULLY EXAMINE STATUTES, DECREES, RESOLUTIONS AND OTHER DOCUMENTS IN THIS CASE AND ADVISE WHAT POSITION WE SHOULD TAKE. (THESE DOCUMENTS BEING POUCHED UNDER AIRGRAM). IN MEANTIME, LAWYERS MAY WISH REVIEW WHAT WE BELIEVE ARE SALIENT CLAUSES SENT REF D.
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